

OPs. Applicants that meet the eligibility standards of the CO-OP program may apply to receive loans to help fund start-up costs and meet the solvency requirements of States in which the applicant seeks to be licensed to issue CO-OP qualified health plans. This subpart sets forth the eligibility and governance requirements for the CO-OP program, CO-OP standards, and the terms for loans awarded under the CO-OP program.

§ 156.505 Definitions.

The following definitions apply to this subpart:

Applicant means an entity eligible to apply for a loan described in § 156.520 of this subpart.

Consumer operated and oriented plan (CO-OP) means a loan recipient that satisfies the standards in section 1322(c) of the Affordable Care Act and § 156.515 of this subpart within the timeframes specified in this subpart.

CO-OP qualified health plan means a health plan that has in effect a certification that it meets the standards described in subpart C of this part, except that the plan can be deemed certified by CMS or an entity designated by CMS as described in § 156.520(e).

Exchange has the meaning given to the term in § 155.20 of this subchapter.

Formation board means the initial board of directors of the applicant or loan recipient before it has begun accepting enrollment and had an election by the members of the organization to the board of directors.

Individual market has the meaning given to the term in § 155.20 of this subchapter.

Issuer has the meaning given to the term in § 155.20 of this subchapter.

Member means an individual covered under health insurance policies issued by a loan recipient.

Nonprofit member organization or *non-profit member corporation* means a non-profit, not-for-profit, public benefit, or similar membership entity organized as appropriate under State law.

Operational board means the board of directors elected by the members of the loan recipient after it has begun accepting enrollment.

Predecessor, with respect to a new entity, means any entity that participates

in a merger, consolidation, purchase or acquisition of property or stock, corporate separation, or other similar business transaction that results in the formation of the new entity.

Pre-existing issuer means a health insurance issuer that was in existence on July 16, 2009.

Qualified nonprofit health insurance issuer means an entity that satisfies or can reasonably be expected to satisfy the standards in section 1322(c) of the Affordable Care Act and § 156.515 of this subpart within the time frames specified in this subpart, until such time as CMS determines the entity does not satisfy or cannot reasonably be expected to satisfy these standards.

Related entity means an entity that shares common ownership, control, or governance structure (including management team or Board members) with a pre-existing issuer, and satisfies at least one of the following conditions:

(1) Retains responsibilities for the services to be provided by the issuer.

(2) Furnishes services to the issuer's enrollees under an oral or written agreement.

(3) Performs some of the issuer's management functions under contract or delegation.

Representative means an individual who stands or acts for an organization or group of organizations through a formal agreement or financial compensation such as a contractor, broker, official, or employee.

SHOP has the meaning given to the term in § 155.20 of this subchapter.

Small group market has the meaning given to the term in § 155.20 of this subchapter.

Solvency Loan means a loan provided by CMS to a loan recipient in order to meet State solvency and reserve requirements.

Sponsor means an organization or individual that is involved in the development, creation, or organization of the CO-OP or provides 40 percent or more in total funding to a CO-OP (excluding any loans received from the CO-OP Program).

Start-up Loan means a loan provided by CMS to a loan recipient for costs associated with establishing a CO-OP.

§ 156.510

State has the meaning given to the term in § 155.20 of this subchapter.

[76 FR 77411, Dec. 13, 2011, as amended at 77 FR 18474, Mar. 27, 2012]

§ 156.510 Eligibility.

(a) *General.* In addition to the eligibility standards set forth in the CO-OP program Funding Opportunity Announcement (FOA), to be eligible to apply for and receive a loan under the CO-OP program, an organization must intend to become a CO-OP and be a nonprofit member organization.

(b) *Exclusions from eligibility.* (1) Subject to paragraph (b)(2) of this section, an organization is not eligible to apply for a loan if:

(i) The organization or a sponsor of the organization is a pre-existing issuer, a holding company (an organization that exists primarily to hold stock in other companies) that controls a pre-existing issuer, a trade association comprised of pre-existing issuers and whose purpose is to represent the interests of the health insurance industry, a foundation established by a pre-existing issuer, a related entity, or a predecessor of either a pre-existing issuer or related entity;

(ii) The organization receives 25 percent or more of its total funding (excluding any loans received from the CO-OP Program) from pre-existing issuers, holding companies (organizations that exists primarily to hold stock in other companies) that control pre-existing issuers, trade associations comprised of pre-existing issuers and whose purpose is to represent the interests of the health insurance industry, foundations established by a pre-existing issuer, a related entity, or a predecessor of either a pre-existing issuer or related entity; or

(iii) A State or local government, any political subdivision thereof, or any instrumentality of such government or political subdivision is a sponsor of the organization. The organization receives 40 percent or more of its total funding (excluding any loans received from the CO-OP Program) from a State or local government, any political subdivision thereof, or any instrumentality of such a government or political subdivision.

(2) The exclusions in paragraphs (b)(1)(i) and (b)(1)(ii) of this section do

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not exclude from eligibility an applicant that:

(i) Has as a sponsor a nonprofit, not-for-profit, public benefit, or similarly organized entity that is also a sponsor for a pre-existing issuer but is not an issuer, a foundation established by a pre-existing issuer, a holding company that controls a pre-existing issuer, or a trade association comprised of pre-existing issuers and whose purpose is to represent the interests of the health insurance industry, provided that the pre-existing issuer sponsored by the nonprofit organization does not share any of its board or the same chief executive with the applicant; or

(ii) Has purchased assets from a pre-existing issuer provided that it is an arm's-length transaction where each party acts independently and has no other relationship with the other party.

(3) The exclusion of any instrumentality of a State or local government in paragraph (b)(1)(iii) of this section does not exclude from eligibility or sponsorship an organization that:

(i) Is not a government organization under State law;

(ii) Has no employee of a State or local government serving in his or her official capacity as a senior executive (for example, President, Chief Executive Officer, or Chief Financial Officer) for the organization; and

(iii) Has a board of directors on which fewer than half of its directors are employees of a State or local government serving in their official capacities.

[76 FR 77411, Dec. 13, 2011, as amended at 77 FR 18474, Mar. 27, 2012]

§ 156.515 CO-OP standards.

(a) *General.* A CO-OP must satisfy the standards in this section in addition to all other statutory, regulatory, or other requirements.

(b) *Governance requirements.* A CO-OP must meet the following governance requirements:

(1) *Member control.* A CO-OP must implement policies and procedures to foster and ensure member control of the organization. Accordingly, a CO-OP must meet the following requirements:

(i) The CO-OP must be governed by an operational board with all of its directors elected by a majority vote of a